

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5074

MINORITY (202) 225-5051

<https://oversight.house.gov>

May 11, 2026

The Honorable Scott Kupor  
Director  
U.S. Office of Personnel Management  
1900 E. St. NW  
Washington, DC 20415

Dear Director Kupor:

The Committee on Oversight and Government Reform is conducting oversight of taxpayer-funded payouts to federal employees issued to settle disputes initiated by federal employees against their employing agency. While payouts are intended to resolve cases brought before administrative bodies tasked with handling federal employment, labor, and personnel disputes, available evidence raises several areas of concern. These include growing fiscal costs to taxpayers; persistent gaps in data collection and transparency; structural incentives for adjudicators that may favor informal resolution over taxpayer interests; and the incentivization of frivolous claims that produces a chilling effect on managers disciplining employees when warranted. The Committee requests that relevant agencies and adjudicatory bodies provide documents and information to assist this review.

Settlements are the dominant resolution mechanism across the federal administrative adjudication landscape. A substantial majority of disputes are resolved prior to formal adjudication. The fiscal implications of these practices are significant. In fiscal year 2023, the Biden administration's Equal Employment Opportunity Commission (EEOC) reported securing more than \$202 million in taxpayer payouts to federal workers through mediation and settlements, compared to just over \$22.6 million through litigation.<sup>1</sup> Similarly, in the Merit Systems Protection Board (MSPB) under the Biden administration, attorney fee payouts in sue-and-settle cases alone surged to nearly \$11 million, compared to \$3.6 million during President Trump's first term.<sup>2</sup> Settlements across these systems routinely involve taxpayer-funded payments including back pay, compensatory damages, attorney's fees, and other monetary relief.

Across all federal government settlements, the U.S. Department of the Treasury Judgment Fund paid approximately \$3 billion and \$4 billion in administrative and litigative

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<sup>1</sup> Press Release, U.S. Equal Employment Opportunity Commission, *EEOC Releases Annual Performance Report for Fiscal Year 2023* (March 2024).

<sup>2</sup> Jeremy Portnoy, *Waste of the Day: Feds Pay Nonprofits That Sue the Government*, OPEN THE BOOKS (Dec. 2025).

claims in fiscal years 2015 and 2016, respectively.<sup>3</sup> Efforts to track and account for these settlements appear woeful. Agencies often fail to reimburse the Treasury for settlements paid on their behalf. As recently as the drafting of this letter, the Treasury's public datasets demonstrate that federal agencies carry hundreds of millions of dollars in unreimbursed obligations.<sup>4</sup> These failures implicate Congress' constitutional authority over federal appropriations and spending and suggest that the true fiscal cost of settlements is systematically underreported.

Where cases do proceed to adjudication, agencies frequently prevail. For example, in adverse action cases that are not dismissed at the MSPB, agencies opt to settle 68% of the time. Among cases that proceed to decision, more than 80% of agency adverse action decisions are upheld, suggesting that agencies are frequently and inexplicably settling cases with taxpayer dollars that they would otherwise win.<sup>5</sup> This raises the question of whether cases are being settled despite a high likelihood of government success on the merits, and, if so, whether systemic incentives are driving outcomes that prioritize short-term expediency over long-term accountability and savings for taxpayers.

The Administrative Conference of the United States (ACUS) and other bodies recognize that adjudicatory performance metrics influence case processing behavior, underscoring the importance of ensuring that such metrics do not unintentionally incentivize outcomes that undermine fairness, accountability, or fiscal responsibility.<sup>6</sup> The Committee is concerned that internal performance metrics for Administrative Law Judges (ALJs) or other adjudicatory personnel may create incentives to resolve cases through settlement rather than adjudication on the merits. If case closures for federal employee disputes are used as the sole measure of performance, this may encourage the rapid settlement of cases, including those involving significant claims against the federal government. Such practices could contribute to increased taxpayer-funded payouts while reducing transparency into agency misconduct and limiting the development of precedential decisions.

The MSPB has acknowledged that settlement is encouraged as a means of conserving administrative resources.<sup>7</sup> However, while settlement may promote administrative efficiency, excessive reliance on it carries real costs: it forecloses the development of beneficial legal precedent, masks patterns of prohibited personnel practices, and allows agencies to manage recurring legal liability without addressing the underlying misconduct. Congress cannot exercise meaningful oversight of the federal workforce when a supermajority of disputes are resolved through opaque, non-public agreements.

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<sup>3</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-19-44, 2018, TREASURY JUDGMENT FUND: TRANSPARENCY AND RELIABILITY NEEDED IN REPORTING FUND BALANCES AND ACTIVITIES TREASURY JUDGMENT FUND ANNUAL REPORTS, FY2015–FY2016.

<sup>4</sup> U.S. Department of Treasury, Bureau of the Fiscal Service, *Judgment Fund: Annual Report to Congress*, accessed May 5, 2026.

<sup>5</sup> *The Limited Powers of the U.S. Merit Systems Protection Board*, U.S. Merit Systems Protection Board.

<sup>6</sup> *Improving Timeliness in Agency Adjudication* (Recommendation 2023-7) Administrative Conference of the United States, (Dec. 2023).

<sup>7</sup> *Introduction to Federal Employee Appeals*, U.S. Merit Systems Protection Board.

In some cases, settlements also impose non-monetary obligations with substantial operational costs. For example, Federal Labor Relations Authority's (FLRA) unfair labor practice (ULP) settlement agreements frequently impose prospective obligations on agencies requiring them to bargain with unions before implementing operational changes, rescind personnel actions, restore prior working conditions, or notify unions before taking future management actions.<sup>4</sup> These prospective obligations can effectively expand the scope of collective bargaining beyond what the Federal Service Labor-Management Relations Statute authorizes, and may constrain agency management rights protected under 5 U.S.C. § 7106 without going through the formal adjudicatory process that would subject such expansions to appellate review.

Another non-monetary cost of settlements is their impact on the ability and willingness of managers to hold federal employees accountable. An MSPB survey found that only 40% of federal supervisors were confident they could remove an employee for serious misconduct, and just 25% felt they could do so for poor performance.<sup>8</sup> Federal managers are thus often reluctant to initiate warranted disciplinary actions due to the likelihood of employees challenging the actions through negotiated grievance procedures, arbitration, or other personnel adjudication forums.<sup>9</sup> Employees may leverage these procedural avenues to extract settlements and delay or prevent accountability. Arbitration typically takes an average of 17 months and results in back pay for most reinstatement cases.<sup>10</sup> This environment increases the indirect costs associated with personnel management and erodes agencies' ability to enforce performance and conduct standards, to the detriment of taxpayers.

Despite the scale and significance of settlement activity, comprehensive data on settlement frequency, costs, and distribution across agencies is not publicly available, and may not exist in any centralized form. Prior Government Accountability Office (GAO) reporting has identified persistent challenges in tracking settlement payments and their underlying causes, limiting Congress' ability to assess whether agencies are addressing misconduct or simply buying it off.<sup>11</sup> The No FEAR Act requires GAO to review the financial impact of settlements on Treasury, yet gaps in agency reporting mean those reviews are built on incomplete data.<sup>12</sup> EEOC's own research has identified that large agencies (those with 15,000 or more employees) account for approximately 94% of all federal EEOC complaints, yet the distribution of settlement costs and discrimination findings within those agencies by office or official is not publicly reported.<sup>7</sup>

This is not merely an administrative inconvenience. The absence of consistent, reliable data on settlement patterns means that repeat offenders can accumulate costly settlement histories without triggering scrutiny or corrective action. Effective oversight requires collection, organization, and reporting of this data to Congress.

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<sup>8</sup> *Remedying Unacceptable Employee Performance in the Federal Civil Service*, U.S. Merit Systems Protection Board, 6 (June 2019).

<sup>9</sup> *Id.*

<sup>10</sup> James Sherk, *Union Arbitrators Overturn Most Federal Employee Dismissals*, AMERICA FIRST POLICY INSTITUTE.

<sup>11</sup> U.S. GOVERNMENT ACCOUNTABILITY OFFICE, GAO-19-44, TREASURY JUDGMENT FUND: TRANSPARENCY AND RELIABILITY NEEDED IN REPORTING FUND BALANCES AND ACTIVITIES (2018).

<sup>12</sup> No FEAR Act, Pub. L. 107-174 (2002).

To assist the Committee's oversight, we request the following documents and information covering January 1, 2020 to the present, no later than May 25, 2026:

1. All documents and data sufficient to show the total number of cases, complaints, or charges filed across relevant adjudicatory systems, and the number and percentage resolved through settlement, Alternative Dispute Resolution (ADR), withdrawal, or formal adjudication, disaggregated by year, agency, and case type to include the following agencies:
  - a. OPM
  - b. MSPB
  - c. EEOC
  - d. FLRA
  - e. OSC
2. All documents and data sufficient to demonstrate the total monetary value of settlements including back pay, damages, attorney's fees, and other payments
3. All documents and data sufficient to show the source of funds satisfying a settlement, including agency appropriations and the Treasury Judgment Fund;
4. All documents and data sufficient to identify non-monetary or prospective obligations imposed through settlement agreements including operational, personnel, or bargaining-related requirements;
5. All settlement agreement templates, model provisions, or guidance used by agencies or adjudicatory bodies and the use of nondisclosure or confidentiality provisions;
6. All documents and analyses identifying patterns or trends in settlements, involving the same agencies, components, offices, unions, or responsible officials;
7. All documents and communications relating to ADR programs, mediation practices, or informal resolution mechanisms, including their usage, outcomes, and fiscal impact;
8. All internal reports, memoranda, or communications in which settlement practices, fiscal impacts, structural incentives, or data limitations were analyzed or discussed.
9. All internal communications, memoranda, or reports relating to MSPB's Mediation Appeals Program (MAP) practices, trends, or fiscal impact.
10. All internal memoranda, guidance, evaluations, or reports relating to the performance assessment of Administrative Law Judges, administrative judges, enforcement personnel or other adjudicatory personnel, including any metrics, criteria, or benchmarks related to

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case closures, settlement rates, or timeliness, and any documents evaluating whether settlements are viewed favorably in performance reviews.

The Committee on Oversight and Government Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. To arrange delivery of documents or to ask any related follow-up questions, please contact Committee Majority staff at (202) 225-5074.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style with a horizontal line underneath the name.

James Comer

Chairman

Committee on Oversight and Government Reform

cc: The Honorable Robert Garcia, Ranking Member  
Committee on Oversight and Government Reform

The Honorable Russell Vought  
Director, Office of Management and Budget